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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-935

MARVIN ALLEN, STEVEN JACOBSMEYER AND UNKNOWN POLICE OFFICERS,

Petitioners,

vs.

WILLIE McCURRY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT

BRIEF OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., THE STATE OF MARYLAND, AND THE CITY AND COUNTY OF SAN FRANCISCO, AS AMICI CURIAE IN SUPPORT OF THE PETITIONERS

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This brief is filed pursuant to Rule 42 of the Supreme Court Rules. Consent to file has been granted by Jack L. Koehr, Esq., City Counselor and John J. FitzGibbon, Esq., Associate City Counselor, Saint Louis, Missouri, counsel for the Petitioners, and by Morris A. Shenker, Esq., and Andrew F. Puzder, Esq., counsel for the Respondent. Letters of consent of both parties have been filed with the Clerk of this Court. States and municipal-county governments are not required to obtain consent to file as *amicus curiae.*

INTEREST OF AMICI

I.

GENERAL INTEREST OF AMICI

Americans for Effective Law Enforcement, Inc. (AELE), as a citizens group, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

AELE is a national, not-for-profit citizens organization incorporated under the laws of the State of Illinois. As stated in its by-laws, its purposes are:

1. To explore and consider the needs and requirements for the effective enforcement of the criminal law.
2. To inform the public of these needs and requirements, to the end that the courts will administer justice based upon a due concern for the general welfare and security of law abiding citizens.
3. To assist the police, the prosecution, and the courts in promoting a more effective and fairer administration of the criminal laws.

In furtherance of these objectives *AELE* seeks to represent, nationwide, the concern of the average citizen with the problems of crime and police effectiveness to deal with crime. It also provides legal research assistance in support of responsible law enforcement activities, principally through the *amicus curiae* process in the courts.

AELE has previously appeared as *amicus curiae* thirty-three times in the Supreme Court of the United States, and twenty-

six times in other appellate courts, including the federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois and Missouri.

The Attorney General of the State of Maryland is an elected and constitutional official and is the chief legal officer of his State. He has specific responsibility for defending civil rights suits brought against members of the Maryland State Police, elected sheriffs, State correctional officials and employees in the State of Maryland.

The City Attorney of the City and County of San Francisco is an elected and charter official and is the chief legal officer of his jurisdiction. In a combined city-county government approximately the size of the City of St. Louis, the petitioning jurisdiction, he has specific responsibility for defending members of the San Francisco Police and Sheriff's departments.

Together these legal officers represent law enforcement officers in every category of state, county and municipal government. They share a concern for the growing number of civil suits filed against law enforcement officers, many of which are litigated in the federal courts.

II.

SPECIFIC INTEREST OF AMICI

Our interest arises from the important constitutional and policy questions pertaining to police activity in general, and in particular the type of activity involved in the instant case. We are vitally concerned with the issue of finality in Fourth Amendment claims and the need to protect law enforcement officers from the avalanche of groundless civil litigation they will face as a result of the decision of the Eighth Circuit Court of Appeals. It is our belief that it is desirable to fully explore and discuss the legal and policy issues of interest to law enforcement agencies, and that a full airing of the issues will aid the court in understanding the critically important law enforcement

interest in this case and in putting all of the issues into the broadest possible perspective.

Apart from our desire to give voice to the American public concerned about crime and its consequences, we believe that it is important to also express what we think are the views of the law enforcement profession as a whole, unrestricted by the needs or desires to uphold a particular decision or to sustain the lawfulness of a particular law enforcement activity such as the search and seizure that was conducted by the police officers in this case. This position can be assumed by an *amicus* whereas it may not be available to a litigant. The importance of our stating these views is obvious in the light of the following considerations set forth in the *President's Commission on Law Enforcement and Administration of Justice* 94 (1967):

> . . . many . . . decisions [are] made without the needs of law enforcement, and the police policies that are designed to meet those needs, being effectively presented to the court. If judges are to balance accurately law enforcement needs against human rights, the former must be articulated. They seldom are. Few legislatures and police administrators have defined in detail how and under what conditions certain police practices are to be used. As a result, the courts often must rely exclusively on intuition and common sense in judging what kinds of police action are reasonable or necessary, even though their decisions about the actions of one police officer can restrict police activity in the entire nation.

We stress that our law abiding citizens and the police have much at stake in this case, involving as it does the ability of the police to engage in lawful investigative activities without the constant threat of being mulcted in damages by prisoners filing *pro se* suits months or years after the complained-of conduct, and *after* the constitutional claims have been decided adversely to them in a full and fair hearing in a state court. If the police are to be called upon to protect the public and themselves in situations such as presented by the facts of this case, they them-

selves must be protected from the ever-present spectre of frivolous and harassing law suits in performing their sworn duty. They cannot be expected to constantly keep their eyes on the possibility of law suits while attempting to perform their duty, otherwise it would be futile to expect them to effectively perform that duty. If they cannot be so protected by the courts in the proper and reasonable application of principles of finality in litigation that fully comport with due process, then it may be doubted whether any agency of government can protect our citizens from the lawless elements that continue to plague our communities.

The policeman's role is vital to the security of a Free Society, as noted in the *President's Commission Report, supra,* at p. 92:

> In society's day-to-day efforts to protect its citizens from the suffering, fear, and property loss produced by crime and the threat of crime, the policeman occupies the front line. It is he who directly confronts criminal situations, and it is to him that the public looks for personal safety. The freedom of Americans to walk their streets and be secure in their homes—in fact, to do what they want when they want—depends to a great extent on their policemen.

We ask this Court to do no more than it has already done in reaffirming those principles of finality in the civil litigation process that will make it possible for the police to continue their difficult tasks, while fully protecting individuals who have meritorious claims of violation of their civil rights. This balance has already been struck by this Court many times as will be subsequently shown, and we ask the Court not to recede from the appropriate application of the principles of law inherent in those decisions.

FACTUAL AND PROCEDURAL SETTING OF THIS CASE*

In the late evening hours of April 9, 1977, several policemen from the Tactical Anti-Crime Team of the St. Louis Police Department went to a home intending to make a purchase of narcotics at that location and then arrest the seller. Two officers, Jacobsmeyer and Allen, went up to the door of the premises and knocked. The remaining officers secreted themselves at the rear of the house and near the front door. Respondent opened the door and Officer Allen said they had been sent by one Murphy and wanted to buy "two caps" or "two buttons" of heroin. Respondent stated that they should wait while he got what they wanted. He then left the doorway, closing the door until it was slightly ajar. Officers Jacobsmeyer and Allen signalled to the nearby police officers who moved closer to the doorway but still attempted to remain concealed. All of the police officers were dressed in casual clothing, although all of them except officers Jacobsmeyer and Allen wore armbands and caps identifying them as members of the tactical unit. Approximately thirty seconds after leaving the doorway, Respondent returned and began firing at officers Jacobsmeyer and Allen. Both were hit. The other police officers then began firing into the house and were shortly joined by a large number of uniformed police responding to a radio call for assistance. Many of these officers also began firing into the house. After five or ten minutes the police ceased firing and by loudspeaker announced to any occupants of the house that the house was surrounded and they should surrender. Respondent and his father then left the house, unarmed, and were arrested. Upon a search

* The statement of facts is taken from the opinion of the Missouri Court of Appeals, Eastern District, Division One, *State* v. *McCurry*, No. 39999, filed August 14, 1979, and not from the record of the trial court.

of the house heroin was discovered on a dresser top in a bedroom. A pistol from which the bullet which hit officer Jacobsmeyer was discharged was found and a shotgun was also found. These items were in plain view. Additional contraband was found in dresser drawers and hidden in some tires on a porch. These items were not in plain view. After a hearing on Respondent's motion to suppress evidence, the trial court sustained the motion as to those items found in the dresser drawers and the tires and denied the motion as to the items in plain view.

Respondent contended at trial that he believed the men at the door were burglars trying to force their way into his house, that he removed a pistol from his back pocket and fired at them and that he would not have done so had he realized they were police officers.

Following his state conviction on one count of illegal possession of heroin and two counts of assault with intent to kill with malice aforethought, and while his state appeal was pending (which affirmed the conviction), Respondent commenced a *pro se* action in the United States District Court for the Eastern District of Missouri. The complaint sought damages from individual police officers "for the violation of the U. S. Constitutional Rights of the Plaintiff." It was construed to allege that (1) the police officers conspired to conduct an illegal search of Respondent's home; (2) an illegal search of Respondent's home was carried out; and (3) Respondent was assaulted after being arrested. The action was apparently brought under 42 U. S. C. §§ 1983, and 1985(3), with federal jurisdiction invoked under 28 U. S. C. § 1343.

Subsequent to the filing of the complaint, Petitioners moved for dismissal and also for partial summary judgment on the claim of illegal search. The District Court granted the motion for summary judgment, holding that Respondent was collaterally estopped to litigate the legality of the search because an identical claim had been presented to the state court in the

criminal prosecution and the search had been held lawful, although certain items not found in plain view had been suppressed. The District Court also dismissed the remainder of the complaint for reasons not here material. *McCurry* v. *Allen,* 466 F. Supp. 514 (E. D. Mo. 1978).

On appeal, the Court of Appeals for the Eighth Circuit reversed the District Court in all respects. *McCurry* v. *Allen,* 606 F. 2d 795 (8th Cir. 1979). Although the court acknowledged that "the search and seizure aspect of his [McCurry's] claim was . . . essentially the same claim that was litigated at the suppression hearing", 606 F. 2d at 797, it nevertheless concluded that collateral estoppel was not available to the police officers as a defense. The basis for this decision was stated as follows: "We conclude that because of the special role of the federal courts in protecting civil rights . . ., and because habeas corpus is now unavailable to appellant, see *Stone* v. *Powell,* [428 U. S. 465 (1976)], it is our duty to consider fully, unencumbered by the doctrine of collateral estoppel, appellant's § 1983 claims." 606 F. 2d at 799. In so holding, the Court of Appeals denied that it was passing on the general question of "whether collateral estoppel applies to § 1983 actions when the issues raised in the § 1983 suit were determined adversely to the § 1983 plaintiff in an underlying state criminal trial." 606 F. 2d at 797-798.

Petition for a writ of certiorari was filed by Petitioners to the United States Court of Appeals for the Eighth Circuit, which petition was granted on February 19, 1980.

ARGUMENT

I.

A CONVICTED FELON IS PRECLUDED UNDER THE RULE OF STONE v. POWELL FROM MAINTAINING AN ACTION FOR DAMAGES UNDER 42 U. S. C. § 1983 ON THE BASIS THAT THE SAME CLAIM OF UNLAWFUL SEARCH AND SEIZURE WAS RAISED, FULLY LITIGATED, AND ADJUDICATED ADVERSELY TO HIM IN A PRIOR STATE CRIMINAL PROCEEDING, AND ON THE BASIS OF FEDERALLY FORMULATED RULES OF RES JUDICATA AND COLLATERAL ESTOPPEL

As is the custom of *AELE* when appearing as *amicus curiae* before this Court, we will not reiterate at any length the legal arguments made by the Petitioners in this case, although we are in complete accord with such arguments and wish to associate ourselves with and express our complete support for them. We will, however, as already stated, address ourselves to the important policy questions raised by the issues in this case, and to their importance to the effectiveness of law enforcement nationwide.

When issues are presented to a federal court in the context of a § 1983 action, and those same issues have been fully and completely litigated in a state court or could have been fully and completely litigated in a state court, res judicata principles bar the relitigation of these same issues in the federal court. Res judicata estops not only as to every ground of recovery or defense actually presented in the state court action, but also as to every ground which might have been presented. See, *Preiser* v. *Rodriguez*, 411 U. S. 475 (1973); *Coogan* v. *Cincinnati Bar Association*, 431 F. 2d 1209 (6th Cir. 1970); *Garner* v. *Louisiana State Board of Education*, 489 F. 2d 91 (5th Cir. 1974).

Separate and apart from the issue of res judicata, the Respondent should be barred from relitgating these issues under the doctrine of collateral estoppel. Collateral estoppel would apply as to issues actually litigated and decided in the Missouri state court proceedings even where the parties are not the same. Neither res judicata nor collateral estoppel should be bypassed in the instant case solely on the grounds that respondent alleges a violation of a federally guaranteed constitutional right. State courts also have the power and authority to pass upon federal constitutional issues. See, *Robb* v. *Connelly,* 111 U. S. 624 (1884); *Loveli* v. *Laliberte,* 498 F. 2d 1261 (1st Cir. 1974); *Mastracchio* v. *Ricci,* 498 F. 2d 1257 (1st Cir. 1974); and *Brown* v. *DeLayo,* 498 F. 2d 1173 (10th Cir. 1974).

Most importantly, this Court in *Stone* v. *Powell,* 428 U. S. 465 (1976), held "that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." 428 U. S. at 495. *Amici* submit that *Stone* v. *Powell* must be read as standing for the proposition that rules of federal law fashioned by federal judges ought to be enunciated with an eye toward fostering judicial economy and federal-state comity, without sacrificing the interests of justice. Like the exclusionary rule that is applied in Fourth Amendment claims, res judicata and collateral estoppel are essentially judge-made rules, and are probably more deeply embedded in Anglo-American jurisprudence than the relatively newer exclusionary rule. Many of the considerations underlying res judicata and collateral estoppel—e.g., conservation of judical time, preservation of respect for the administration of justice, and prevention of harassment of litigants—also underlie the rationale of *Stone* v. *Powell.* We submit that so long as state courts provide an opportunity for full and fair litigation of Fourth Amendment claims, this Court should continue to apply the federal rules of collateral estoppel

to § 1983 actions based on identical claims, and that this is fully consistent with the rule and logic of *Stone* v. *Powell.*

We note, parenthetically, that the companion case to *Stone* was *Wolff* v. *Rice,* which also arose from the Eighth Circuit. In its panel decision, the Eighth Circuit concluded that federal habeas corpus was available to convicted state inmates who challenged the legality of a search and seizure, 513 F. 2d 1280 (8th Cir. 1975). The State of Nebraska in *Rice* unsuccessfully moved for a rehearing and a rehearing *en banc.* In *Stone* and *Rice,* the opinions of the Eighth and Ninth Circuits were reversed by this Court, 428 U. S. at 496-497.

It would appear that the Eighth Circuit is attempting, in the instant case, to circumvent the results of this Court's decision in *Stone* and *Rice.* Unable to entertain a collateral attack on a state conviction by habeas corpus under 28 U. S. C. § 2254, they now seek to predicate jurisdiction through 42 U. S. C. § 1983.

In reality the Eighth Circuit Court of Appeals has invited state prisoners to subvert this Court's holding in *Stone* v. *Powell* by means of § 1983 actions, and has unilaterally sought to change long-standing and well-established rules of collateral estoppel in § 1983 actions based on alleged Fourth Amendment violations. In doing so it succeeded in attaining the curious distinction of aligning itself against nearly every federal court that has addressed the issue. Those courts have uniformly held that res judicata and collateral estoppel apply in § 1983 actions and that prior state civil and criminal judgments are to be given preclusive effect, even when constitutional issues are involved. See, *Martin* v. *Delcambre,* 578 F. 2d 1164 (5th Cir. 1978); *Winters* v. *Lavine,* 574 F. 2d 46 (2nd Cir. 1978); *Rimmer* v. *Fayetteville Police Dept.,* 567 F. 2d 273 (4th Cir. 1977); *Mastracchio* v. *Ricci, supra; Thistlethwaite* v. *City of New York,* 497 F. 2d 339 (2nd Cir.), *cert. den.,* 419 U. S. 1093 (1974); *Brazzell* v, *Adams,* 493 F. 2d 489 (5th Cir. 1974); *Metros* v. *United States District Court,* 441 F. 2d 313

(10th Cir. 1970); *Kauffman* v. *Moss*, 420 F. 2d 1270 (3rd Cir.), *cert. den.*, 400 U. S. 846 (1970); compare *Brubaker* v. *King*, 505 F. 2d 534 (7th Cir. 1974) with *Williams* v. *Liberty*, 461 F. 2d 325 (7th Cir. 1972). Compare *Mulligan* v. *Schlachter*, 389 F. 2d 231 (6th Cir. 1968) with *Curtis* v. *Tower*, 262 F. 2d 166 (6th Cir. 1959); but see *Ney* v. *California*, 439 F. 2d 1285 (9th Cir. 1971).

We respectfully invite this Court to dispell the asserted concern of the Court of Appeals as little more than a thinly veiled attempt to emasculate the policy considerations underlying this Court's holding in *Stone*, when the court states that "if collateral estoppel is to apply in § 1983 actions raising search and seizure claims, there will be no federal forum for the victim of a search and seizure which allegedly violates the federal constitution." 606 F. 2d at 798.

II.

AFFIRMANCE OF THE DECISION OF THE COURT OF APPEALS WILL ENCOURAGE INNUMERABLE STATE PRISONERS TO SEEK RELITIGATION OF FOURTH AMENDMENT AND OTHER CONSTITUTIONAL CLAIMS UNDER 42 U. S. C. § 1983 AND WILL SUBJECT INCREASING NUMBERS OF LAW ENFORCEMENT OFFICERS TO THE HARASSMENT AND VEXATION OF GROUNDLESS CIVIL LITIGATION

Amici readily admit that they will not endear themselves to the plaintiffs' bar and related interests by pointing out to this Court the practical ramifications for law enforcement in this country of the decision of the court below, if affirmed. We have referred to the likelihood of an avalanche of groundless civil litigation that will be engendered by that decision. The term "avalanche" is pictorial, but apt. So is the term "torrent." The latter term was applied to the dramatic growth of civil rights litigation in recent years by Mr. Justice Rehnquist in his dissent in *Monell* v. *Dept of Social Services*, 436 U. S. 658 (1978).

The statistics of filings of civil rights actions in the federal district courts substantiate the validity of Justice Rehnquist's warning. Such filings during the period 1961 to 1973 grew from 261 to 7,679. *Administrative Office of the United States Courts, 1973 Annual Report* 128. During the fiscal years 1974 through 1978, filings of all types of actions by state prisoners alone grew from 13,423 to 16,969. *Administrative Office of the United States Courts, 1978 Annual Report* 60. During fiscal 1977 and 1978, while all categories of prisoner filings increased 12.2%, civil rights suits filed by prisoners increased 25.9% to 10,366. *Id.*, 61. Between 1970 and 1978, civil rights complaints filed by state prisoners increased 379.3%, totaling some 9,730 in 1978. *Id.*, 75-76. All prisoner filings increased 907.1% between 1960 and 1978, while general civil filings grew a mere 134.1% by comparison. *Id.*, 77.

Amici submit that the decision of the Eighth Circuit Court of Appeals can only encourage this monstrous increase in federal civil rights litigation by state prisoners, while producing the anamolous result that insufficient attention will be paid to meritorious claims by judges reacting to the outrage of suffocating numbers of frivolous claims assaulting their dockets. Respondent may be pleased to find himself in the highest court of the land with his claim today, but many prisoners who are less fortunate to gain the ear of a federal court judge with a meritorious claim will not applaud his effort. And while the Court of Appeals professed to limit the application of its decision to Fourth Amendment claims couched in the typical *Stone* v. *Powell* setting, its refusal to give preclusive effect to the Missouri state court judgment threatens the continued application of collateral estoppel rules in § 1983 actions generally, regardless of the underlying constitutional claim. *Amici* submit that, in fact, the decision of the Court of Appeals is little more than a belated, back door attempt to undermine the sound policy basis for this Court's decision in *Stone* and *Rice*.

It can not be doubted that while the incidence of litigation against law enforcement officers will continue to skyrocket, fueled by decisions such as that of the Court of Appeals, legitimate and necessary law enforcement activities will be adversely affected by the flood of frivolous litigation. If present trends continue, perhaps in excess of 26,000 lawsuits will be filed against law enforcement personnel in 1980 in the state and federal courts. Some 21,000 will allege false arrest, brutality, wrongful death and other intentional misconduct; another 5,000 will claim motor vehicle negligence. *Amicus AELE* recently completed a preliminary analysis of its second five-year survey of state and federal police misconduct litigation. The ten-year totals shown in Table 1 indicate that from 1967 through 1976, civil suits against the police rose by 517 percent. In addition to the great increase in suits filed in federal courts, it appears that the number of suits filed in the state courts has also increased dramatically. In fact, approximately four out of every five suits alleging misconduct or civil rights violations were filed in the state courts, refuting the inference that the state courts are oblivious to such claims.

Table 1 — Projected Number of Suits Filed Against State, County & Local Officers

The projected number of suits in state and federal courts, plus vehicular claims, appears in table 1.

Year Suit Filed	Suits in State Courts (Misconduct)	Suits in Federal Courts (Civil Rights)	Motor Vehicle Suits	Total Suits Filed	Misconduct Suits Per 1000 Officers
1967	1,556	167	450	2,173	5.46
1968	1,665	189	484	2,338	5.58
1969	2,045	322	618	2,985	6.53
1970	2,201	794	783	3,778	7.77
1971	2,318	1,545	1,009	4,872	9.30
1972	2,645	1,101	979	4,725	8.05
1973	3,744	1,044	1,250	6,038	9.72
1974	5,959	1,671	1,994	9,624	15.11
1975	6,750	2,178	2,335	11,263	17.11
1976	8,007	2,626	2,778	13,411	19.64

This decennial analysis was undertaken by *AELE* to measure both the positive and adverse effects of lawsuits on police per-

formance. Restrictive court decisions in criminal cases have well-known and frequently documented adverse effects; however, the threat of damage awards and injunctive relief can also undermine police effectiveness. An estimated one million hours are annually consumed investigating civil suits against police, and an equal or greater amount of time is spent by attorneys in defending these cases.

No one, of course, can criticize the right of a citizen to sue law enforcement officers for legitimate injuries. However, although some meritorious claims are settled, less than *four percent* of all suits filed ever result in a plaintiff's verdict. The vast majority of cases are groundless and are dismissed by the courts for lack of a viable cause of action or are voluntarily dropped by plaintiffs. Of those that *actually go to trial,* plaintiffs recover in only 25.77% of the cases. Many such cases are filed to harass conscientious police officers, to obtain revenge, or to provoke discussions leading to the dismissal or reduction of criminal charges pending against a plaintiff. The two five-year surveys included a cross-section of 2,060 law enforcement agencies that, in 1977, employed 153,130 officers, or about one-fourth of the nation's total. Table 1 projects the number of suits for the entire law enforcement establishment.

AELE concedes that civil litigation provides an added incentive for police administrators to continually evaluate departmental procedures and monitor practices of specific officers. The overwhelming volume of suits, however, whether based upon Fourth Amendment claims or other alleged violations of constitutional rights, is counterproductive to this end. Frivolous claims in large numbers numb or desensitize a responsible law enforcement executive. Truly legitimate complaints are overshadowed by thousands of frivolous claims.

The survey indicates that the number of federal and state civil suits for misconduct against city police, county sheriff's personnel and state patrol officers increased from an estimated 1,723

suits in 1967 to 10,633 in 1976. In 1976 a typical law enforcement agency received one civil suit for every 51 full-time officers. The rise in civil suits during this ten-year period was steady and dramatic, as seen in Table 1 and in the graph at Figure 1.

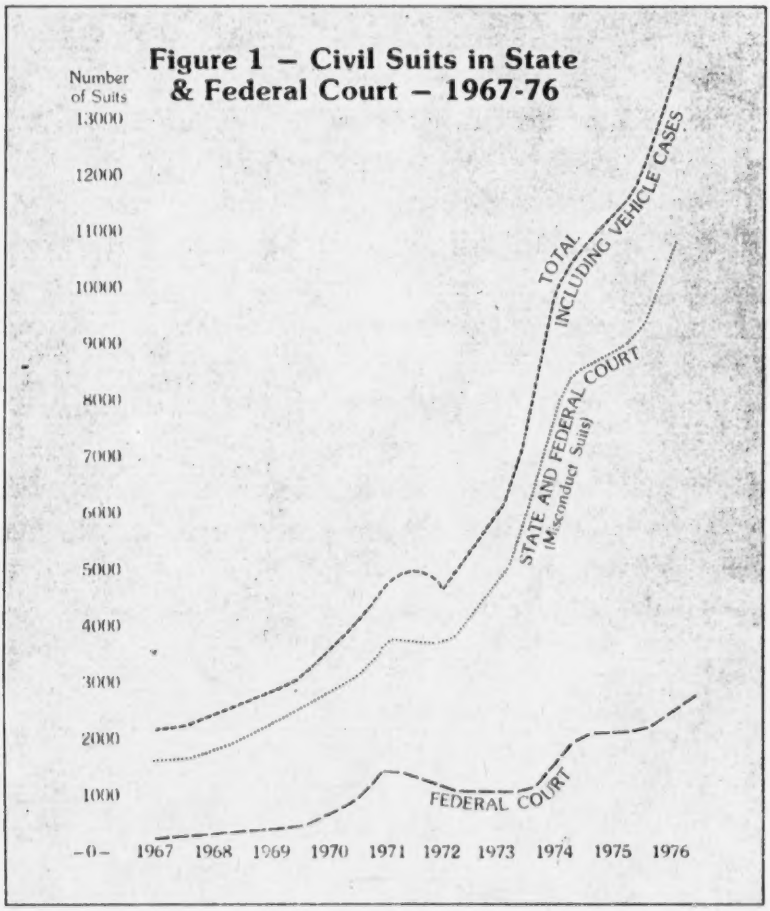

Table 2 indicates the status of suits filed for the two five year periods where disposition is known. The disposition is not surprising. More suits, as a percentage, were still pending in 1976 than in 1971. More were settled, perhaps to reduce the number of pending claims, and perhaps because police—as defendants —have a clearer picture of their liability.

Table 2

STATUS	PERCENT OF SUITS BY STATUS 1967-71	1972-76
Suits still pending	32.1	41.2
Suits settled	14.4	22.5
Dropped by plaintiffs or dismissed on a motion	29.4	22.6
Number tried in court which police WON	19.6	10.1
Number tried in court which police LOST	4.5	3.5

These statistics dramatically illustrate the need for this Court to avoid further exacerbation of the litigation explosion involving law enforcement officers that has overtaken our state and federal courts. *Amici* respectfully submit that affirmance of the application of uniform federal rules of collateral estoppel to § 1983 actions will assure that meritorious claims receive prompt, effective attention from state and federal courts, while at the same time protecting law enforcement officers from the harassment and vexation of groundless civil litigation.

CONCLUSION

Amici respectfully submit that the decision of the United States Court of Appeals, Eighth Circuit, should be reversed on the law and on the basis of sound judicial policy.

Respectfully submitted,

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